Entered - 01/13/99 - sb CL99L0005 - DIANNE C. MITCHELL

CLAIM OF: J. R. HOBBS COMPANY,

through its attorney, James V. Burgess, Jr. 149 South Cherokee

Social Circle, Georgia 30025

For damages alleged to have been sustained as a result of statements made by certain employees on August 4, 1998 at 55 Trinity Avenue.

THIS ADVERSED REPORT IS APPROVED

BY:

ROBERT N. GODFREY DEPUTY CITY ATTORNEY

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. <u>99L0005</u>	Date: <u>December 27, 2000</u>
and the same of th	
Claimant / Victim J. R. HOBBS COMPANY	
BY: (Atty) James V. Burges	Carrie 20025
Address: 149 South Cherokee, Social Circle	, Georgia 30025
Subrogation: Claim for Property damage \$ not Date of Notice: 01/07/99 Method: Writter Conforms to Notice: O.C.G.A. §36-33-5 X Date of Occurrence 08/04/98 Place: Department: Planning Development and Neighborhood C	Stated Bodily Injury \$
Date of Notice: 01/0//99 Method: Writter	i, proper A inproper V
Conforms to Notice: U.C.G.A. 930-33-3 X	Affice Litem (6 Mo.) X
Date of Occurrence <u>06/04/98</u> Place:	ongomention Division: Duildings
Department: <u>Planning Development and Neighborhood C</u>	Disciplinary Action
Employee involved	disciplinary Action.
NATURE OF CLAIM: The claimant alleges it has been d	amaged and severely injured due to statements made by
employees of the Heating, Ventilating and Air Condition	
incidents of this nature pursuant to O.C.G.A. §36-33-1.	
incidents of this nature pursuant to O.C.O.A. 930-33-1.	
INVESTIGATION:	
III ESTIGITION	
Statements: City employee Claimant	Others Written Oral
Pictures Diagrams Reports: Police	Dept Report Other
Traffic citations issued: City Driver	Claimant Driver
Citation disposition: City Driver	
BASIS OF RECOMMENDATION:	
Function: Governmental X Normal More than Six Months Normal More than Six Months	finisterial
Improper Notice More than Six Months	Other X Damages reasonable
City not involved Offer rejected	Compromise settlement
Repair/replacement by Ins. Co.	Repair/replacement by City Forces
City not involved Offer rejected Repair/replacement by Ins. Co. Claimant Negligent City Negligent	Joint Claim Abandoned
	Respectfully submitted,
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	De Sulled
	N. Andrew
	4
	INVESTIGATOR - DIANNE C. MITCHELL
RECOMMENDATION;	
RECOMMENDATION /	
Pay \$ Adverse // Acc	ount charged: 1A01 2J01 2H01
Claims Martager: ////	Concur/date
	Council Action
Table 1	V V WALLAND A & WALLAND A A A A A A A A A A A A A A A A A A
FORM 23-61	

JAMES V. BURGESS, JR.

ATTORNEY AND COUNSELOR AT LAW 149 SOUTH CHEROKEE

SOCIAL CIRCLE, GEORGIA 30025

MAILING ADDRESS: POST OFFICE BOX 785 SOCIAL CIRCLE, GEORGIA 30025

TELEPHONE: (770) 464-3366 FACSIMILE: (770) 464-3466 EMAIL: jimattny@bellsouth.net

December 29, 1998

ENTERED - 1-13-99 - SB99L0005 - DIANNE MITCHELL

CERTIFIED MAIL RETURN RECEIPT REQUESTED

The Honorable Bill Campbell Mayor, City of Atlanta 55 Trinity Ave. SW Atlanta, GA. 30335

Dear Mayor Campbell:

Pursuant to O.C.G.A. Section 36-33-5, you are hereby notified that in our opinion our client, J.R. Hobbs Company (Hobbs) has been injured and severely damaged because of untrue, inaccurate, arbitrary, and capricious statements made by employees of the Heating, Ventilating and Air Conditioning Division (HVAC Division) of the Bureau of Buildings, Department of Planning and Development, City of Atlanta. Hobbs' business reputation in the community generally and with many of its repeat customers in particular has been damaged because of such statements and possibly even tortious treatment by employees of the HVAC Division over the past several months.

It is further asserted that the City is liable for damages, as well as declaratory and injunctive relief, in that officers and employees of the HVAC Division have and are continuing to execute policies and regulations adopted and promulgated by the City Council of the City of Atlanta in a manner that is unconstitutional.

The following is a specific enumeration of incidents involving Hobbs within the past six months:

On or about August 4, 1998, Herman J. Russell of H.J. Russell Construction Company, inquired of the HVAC Division in an effort to determine why Hobbs was having problems getting its inspections approved on the Centennial III Apartment Job. Mr. Russell was informed by a supervisor of the Division that it was because of problems with the work of Hobbs on the McGill Park Job (a totally separate project), and that were it not for a legal technicality, "Hobbs would not be allowed to do any work in the City of Atlanta." Such an assertion seriously damaged Hobbs' reputation and relationship with one of its longest standing customers.

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- 2. On or about August 6, 1998, Hobbs failed an inspection at the John Hope Homes project because of discrimination in the enforcement of Section 509 of the 1994 edition of the Standard Mechanical Code by requiring a higher gauge of metal for clothes dryer vent pipes and a thicker insulation on armaflex installations than are required for such vent pipes and insulation of armaflex installations in other residential properties. It is our understanding that such higher standards are not being required of other heating and air conditioning contractors doing business within the City of Atlanta.
- 3. Hobbs is being treated inconsistently and in a discriminatory manner with regard to charges for Dryer Vent Inspection Permit Fees. Dryer Vent Inspection Permit Fees are not specified in the "Schedule of Permit Fees" in the City of Atlanta Permit Form. In some instances, Hobbs was charged a Dryer Vent Inspection Fee; in other cases Hobbs was not charged. The following are jobs on which Hobbs was charged Dryer Vent Fees within the last six months:

JOB	UNITS	FEE	DATE
Gardens at Buckhead	301	\$2,107	10-30-98
John Hope Homes	166	1,162	9-1-98
Oxford Place	8	56	7-7-98
Esquire Village	144	1,008	5-27-98
Canlen Walk	423	2,961	7-22-98

The following are jobs in the last six months on which Hobbs was not charged a Dryer Vent Fee:

Centennial III	185	0	7-14-98
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It appears that whether or not Hobbs is charged a Dryer Vent Fee is contingent upon which inspector reviews the permit forms.

4. In our opinion, it appears that employees of the HVAC Division have charged and are continuing to charge Hobbs an additional \$25 as a permit fee for water heater flue vents in conjunction with the installation of hydronic heating units. It has been the custom, use, and practice of the HVAC Division to charge a \$25 per gas furnace or hydronic air handler permit fee and \$15 or \$20 as a permit fee for the air conditioning system, depending on the size of the air conditioning unit, but not an additional permit fee of \$25 for the water heater flue vent. Apparently, the customary charges were arbitrarily changed by a supervisor of the HVAC Division when that supervisor became upset with an employee of Hobbs on or about April 4, 1997. While there are a number of continuing instances of this additional arbitrary permit fee charge for water heater flue vents over the past 18 months, an example of this arbitrary

practice within the last six months occurred on the Centennial III job, involving 185 units on July 14, 1998 at a cost to Hobbs for additional permit fees in the amount of \$4,625.

- 5. Hobbs is being charged a permit fee of \$7 for bath fans in violation of Section 104.2 of Ordinance 92-0-0818, which provides: "The following equipment or systems do not require the issuance of permits in accordance with this code, provided such equipment or systems are installed in accordance with manufacturers' requirements and applicable state and federal laws regulating such installation.......(5) Toilet exhaust and attic fans in dwellings." Based on an average of 1.5 bathrooms per dwelling unit, Hobbs has been charged \$15,750 as illegal fees for bath fan permits in the last six months alone.
- 6. In our opinion, it appears that personnel of the HVAC Division have and are continuing to arbitrarily treat Hobbs differently than other contractors with regard to the imposition of reinspection fees. Past practice has been for personnel of the HVAC Division to charge one reinspection fee for the entire building, regardless of the number of units that fail inspection. Within the last six months, however, Hobbs has been arbitrarily charged a re-inspection fee for every single residential unit that failed inspection in a multi-family building as opposed to a single re-inspection fee for the whole building, as has been the custom in the past.

There are several instances in which it appears that employees of the HVAC Division have arbitrarily imposed per unit re-inspection fees against Hobbs within the last six months. For example, Hobbs was charged \$560 on one building re-inspection at Canlen Walk in August, 1998 and \$300 on a building re-inspection at the Centennial III in November, 1998. Under past practice, Hobbs would have been charged only a \$40 re-inspection fee. In another instance, an employee of the HVAC Division charged H.J. Russell Company a re-inspection fee of \$360 because the addresses of the building were not plainly marked. However, this same building was approved by the plumbing inspector, electrical inspector, framing inspector, and the fire marshal, only to be arbitrarily and capriciously disapproved by an inspector assigned for inspection of Hobbs' work.

It is asserted that the City's HVAC inspection fees imposed against Hobbs are in violation of statutory and case law. Local governments, as an exercise of their police power and as part of an aid to regulation of a business, may charge a regulatory fee, but that fee must approximate the reasonable cost of the actual regulatory activities performed by the local government. State law specifically prohibits a local government from using regulatory fees as a means of raising revenue for general purposes. (See O.C.G.A. Sect. 48-13-9) In the instance of Hobbs, the City is using its HVAC regulatory fees as a means of generating revenue and not as a means of actual regulation; therefore it is just a tax by another name. In the case of Hobbs, the Canlen Walk inspection resulted in a fee of \$560 for a re-inspection that involved less than one hour of the inspector's time. A normal inspection routine calls for a total of two (2) inspections (rough and final), both of which require approximately two hours of time.

7. In our opinion, it appears that employees of the HVAC Division enforce HVAC Codes more stringently on Hobbs' jobs than they do on jobs of other contractors doing business in the City of Atlanta. Such practices are clearly arbitrary and capricious and violate the constitutional rights of Hobbs in the execution of the City regulations that have been officially adopted and promulgated by the City Council of the City of Atlanta. Examples of such arbitrary, capricious and unconstitutional execution of HVAC regulations within the last six months include but are not limited to the following:

Jobs of other contractors are required to meet R-4 duct-board and flex insulation values. Hobbs has been required to use R-6 insulation values on substantially all of its jobs in the City of Atlanta, including the installation of ducts in furr downs. Such jobs in which Hobbs has been required to use R-6 insulation values include:

• Defoors Village (all ducts in furr down)

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- John Hope Homes (all ducts in furr down)
- Centennial Phase II
- Centennial Phase III
- Canlen Walk (all ducts in furr down)
- Gardens of Buckhead (all ducts in furr down)
- Post Gardens (all ducts in furr down)
- 450 Piedmont.

The following are examples of jobs by other contractors that were permitted to use R-4 insulation values on duct work:

- 1660 Peachtree
- Post Riverside
- Legacy Park
- Heather Brook Condominiums

Because of the cost differential between R-4 and R-6 insulation value requirements, Hobbs contends that it lost jobs by having to bid R-6 insulation for duct work while competitors were allowed to bid R-4 insulation for duct work. Further, a member of the Division staff has publicly advocated that all ducts in attics be insulated with a value of R-6. However, it appears that from observation by Hobbs of contractor's work on other jobs that they were allowed to install R-4 insulation values on ducts in attics, the only exception being the Heather Brook Road Job, which are \$300,000 condominiums. On this job the flex was found to be R-6 insulation, but the duct-board was all R-4 insulation, including the duct-work in the attic. The State Energy Code requires R-6 insulation of ducts in attics (See: Section 503.71.1, Ga. State Energy Code). The State Energy Code does not require R-6 insulation in air

conditioned spaces, which includes all furr down spaces. No other comparable jurisdiction (Fulton, Dekalb, Cobb, Douglas Counties, etc.) interprets furr downs as air conditioned space.

8. HVAC Division employees require that Hobbs' jobs have UL 181 tape on copper linesets. This same standard is not required of other contractors, where black duct tape is required. UL 181 is a silver tape that costs \$9 per roll. Black duct tape cost \$3 per roll,

Jobs by other contractors that are allowed to use black tape include:

- 1660 Peachtree
- Post Riverside
- Legacy Park
- Heather Brook Condominiums

Jobs by Hobbs where UL 181 silver tape was required:

- Centennial II
- Centennial III
- Post Gardens
- Defoors Village

Hobbs is required to insulate all sheet metal boots, including inside furr downs, as a condition of inspection approval; such code requirements are not imposed on other contractors.

Examples of jobs with un-insulated boots by other contractors:

- 1660- Peachtree
- Post Riverside
- Legacy Park
- Heather Brook Condominiums

Examples of jobs by Hobbs that required insulated boots:

- John Hope Homes
- Centennial II
- Centennial III

In our opinion, it appears that HVAC Division personnel impose more stringent fire protection requirements on Hobbs than are required of other contractors doing business in the City of Atlanta. Examples of jobs by other contractors include:

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- 1660 Peachtree No fire caulk. No rock wool around copper penetration in fire rated assemblies. No sealing around duct penetrations in furr downs.
- Post Riverside No fire dampers in several ducts that pass through fire rated
 partitions; no fire rated sheet rock above many ducts in furr downs; and fire
 dampers not being installed according to the same HVAC Code requirements that
 are imposed on Hobbs. For example, angles are required and the sleeves are of a
 thinner gauge than required of Hobbs.

In our opinion, the above practices constitute arbitrary, capricious and unconstitutional acts in violation of the Civil Rights of the officers and employees of the J. R. Hobbs Company. Hobbs has suffered severe damages, not only to its reputation in the community generally, but its has also lost substantial business in the City of Atlanta as a direct result of the arbitrary and discriminatory manner in which policies, ordinances and regulations officially adopted and promulgated by the official governing body of the City of Atlanta have been executed and implemented by the HVAC Division.

Respectfully Submitted,

JAMES V. BURGESS, JR.

James V. Burgess, Jr.

Georgia Bar No. 095300

DICKINSON & MIXSON, P.C.

David F. Dickinson

Georgia Bar No. 221128

338 North Broad Street Monroe, GA 30655 770-267-8256

cc: Members of the City Council of the City of Atlanta and City Attorney via certified mail.